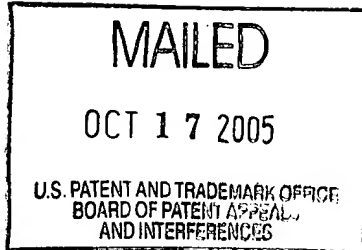


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte AUGUST SPROCK

Application 09/744,485

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on August 24, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that the Final Rejection filed May 3, 2002 refers to a communication filed on March 12, 2002. In addition, the "Status of

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Amendments" located on page 2 of the Appeal Brief filed June 29, 2004 states that an amendment was filed on March 5, 2002 which cancelled claims 1-4 and added new claims 5-7. Also, claims 6 and 7 were noted as being cancelled in an Amendment after final rejection filed July 30, 2003. We were unable to locate a copy of these three papers in the IFW. Correction is required.

According to the IFW, an Examiner's Answer was mailed April 7, 2005. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: . . . (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The IFW is not in compliance with the above because it does not contain an English translation for the Japanese reference to Kamikaji et al. (JP 362112732, dated May 23, 1987) which was relied upon by the Examiner in his rejection of the claim.

In addition, § 1208 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 2, May 2004) states:

Requirements for Examiner's Answer

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

(1) Real Party in Interest. A statement acknowledging the identification of the real party in financial interest or indicating that the party named in the caption of the brief is the real party in interest. . . .

(2) Related Appeals and Interferences. A statement acknowledging appellant's identification of related cases which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal

The Examiner's Answer mailed April 7, 2005 does not comply with the above requirement. Correction is required.

Lastly, § 1208 of the MPEP states:

On the examiner's answer, below the primary examiner's signature, the word "Conferees:" should be included, followed by the typed or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their name. This will make the record clear that an appeal conference has been held. [Emphasis added.]

The Examiner's Answer also does not comply with the above requirement.

Accordingly, it is

ORDERED that the application is returned to the
Examiner:

1) to locate copies of the communication filed
March 12, 2002, the amendment filed March 5, 2002, and the after
final amendment filed July 30, 2003;

2) to have copies of the above three papers scanned
into the IFW;

3) to provide the IFW and mail appellant a certified
English language translation for the Japanese reference to
Kamikaji et al. (JP 362112732, dated May 23, 1987);

4) to issue a revised Examiner's Answer which includes
the headings "Related Party in Interest" and "Related Appeals and
Interferences";

5) for taking corrective action regarding the appeals
conference;


6) to have a complete copy of any subsequent Examiner's
Answer scanned into the IFW;

7) for written notification to appellant regarding the
action taken; and

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8) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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